IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9347 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DSHRATHSINH M RATHOD - Petitioner(s)
Versus
DIRECTOR OF VETARINARY (PASHUPALAN) - Respondent(s)

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Appearance :
MR CB DASTOOR for Petitioner(s) : 1,
MR SATYAM CHAYYA, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 19/02/2007

ORAL JUDGMENT

1. The short facts of the case are that the petitioner was serving in the Animal Husbandry

Department, and during the said period, he was served with a charge-sheet and ultimately, the departmental inquiry was conducted and the inquiry officer found that the charges of insubordination and other charges levelled against the petitioner were proved. It was suggested by the inquiry officer that to set an example, the punishment be imposed upon the delinquent. The disciplinary authority issued the second show-cause notice after the charge-sheet and the opportunity of hearing was given to the petitioner and the order came to be passed of removal from service. The petitioner carried the matter before the Tribunal being Appeal No. 299/99 and the Gujarat Civil Service Tribunal as per the order dated 31.07.2002, dismissed the appeal and it is under these circumstances, the present petition.

2. I have heard Mr.Dastoor for the petitioner and Mr. Chayya, learned AGP for the State Government.

3. Mr. Dastoor, learned counsel for the petitioner submitted that in view of the charges levelled against the petitioner and such charges being proved of insubordination, the matter may be considered by the Court on the aspects of quantum of punishment. He submitted that family circumstances of the petitioner are such that he has minor children and the livelihood of the

family is dependent upon the service of the petitioner. The petitioner had served for about 22 years and because of the alleged ground of insubordination, the petitioner is removed from service. He therefore submitted that as the punishment is disproportionate with the charges levelled against the petitioner, this Court may interfere.

4. As such, on the aspects of the power of this Court under Article 227 of the Constitution for interfering with the punishment imposed upon the employee concerned in the disciplinary proceedings, it is by now well settled that if the punishment is only disproportionate to the charges levelled against the person concerned and shockingly disproportionate to the consciousness of the Court, normally this Court would not interfere in the matter of imposition of punishment. If such test is considered, the ground shown was that of insubordination and of making allegations against the superior. After following the principles of natural justice, the charges are proved and therefore, as such, the punishment imposed upon the petitioner cannot be said as shockingly disproportionate to the charges levelled against him. Apart from the above, when the authority has exercised the discretion, it is not a case under Article 227 of the Constitution to interfere in the matter of proportionality of the punishment imposed

upon the petitioner.

5. Mr. Dastoor lastly submitted that in view of the peculiar circumstances of the family of the petitioner, this Court may permit the petitioner to make the representation to the disciplinary authority to reconsider the matter for alteration of the punishment by taking some lenient view. He relied upon the decision of this Court in the case of Surendrasingh B. Rana Vs. Divisional Security Commissioner in Special Civil Application No. 11275 of 2003 decided on 02.08.2003 and contended that in the said matter, the Division Bench observed that the authority may show the grace by accepting the mercy petition of the petitioner and may give him chance of improving by passing lesser punishment than of removal of the service. Mr.Dastoor therefore submitted that such opportunity may also be given to the petitioner.

6. In my view, even if this Court has found that the punishment is not disproportionate to the charges levelled against the petitioner, in view of the aforesaid observations of the Division Bench in the above referred decision, if the petitioner is desirous to make the representation, and if the authority is inclined to consider the same, the matter may be considered accordingly.

7. Hence, it is observed that if the petitioner

makes such representation, the same shall be considered in accordance with law and more particularly in light of the observations made by the Division Bench in the above referred decision.

8. Under the above circumstances, subject to the aforesaid observations, the petition is dismissed. Subject to the aforesaid observations, Rule discharged with no order as to costs.

(JAYANT PATEL, J.)

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